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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 GABRIEL ECKARD,

10 Plaintiff,

CASE NO. C19-0813-RSM

11 v.

12 MICHAEL RIZK, et al.,

13 Defendants.

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING ACTION

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15 This matter comes before the Court on the Report and Recommendation of the Honorable
16 Mary Alice Theiler. Dkt. #6. Plaintiff Gabriel Eckard has not filed objections. Instead, Mr.
17 Eckard has filed a Motion to Dismiss to withdraw his Complaint without further explanation. Dkt.
18 #7. It is clear to the Court that Mr. Eckard wishes to withdraw his Complaint to avoid dismissal
19 counting as a strike under 28 U.S.C. § 1915(g), as recommended by Judge Theiler.¹ This strategy
20 is not permitted by the Court. *See Love v. Jones*, 2018 U.S. Dist. LEXIS 104595 (S.D. Fla. Jun.

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22 ¹ 28 U.S.C. § 1915(g) states, “[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action
23 or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in
any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is
frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent
danger of serious physical injury.”

20, 2018) (“Allowing prisoners to file multiple complaints, wait until they are screened, and then dismiss only those found to be wanting... would frustrate Congressional intent in enacting the PLRA.”); *Davis v. Huskipower Outdoor Equip. Corp.*, 936 F.2d 193, 199 (5th Cir. 1991).

Accordingly, having reviewed plaintiff’s civil rights complaint, the Report and Recommendation of Mary Alice Theiler, United States Magistrate Judge, and the remaining record, the Court hereby finds and ORDERS:

1. The Report and Recommendation (Dkt. #6) is ADOPTED;
2. Plaintiff’s complaint (Dkt. #5) and this action are DISMISSED with prejudice for failure to state a claim on which relief may be granted under 28 U.S.C. § 1915(e)(2)(B)(ii). The Clerk shall count this dismissal as a strike under 28 U.S.C. § 1915(g); and
3. The Clerk is directed to send copies of this Order to plaintiff and to the Honorable Mary Alice Theiler.

DATED this 8 day of July 2019.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE